RESTRICTION ELECTION FACSIMILE TRANSMISSION

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PLEASE NOTE: THIS FACSIMILE NUMBER IS TO BE USED ONLY FOR RESPONSES TO RESTRICTIONS.

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PATENT #3 12/16/00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Peter Nash et al	)
Serial No. 09/616,843	)
Filed: July 14, 2000	)
For: IMMUNOGEN ADHERENCE INHIBITOR AND METHOD OF MAKING AND USING SAME	) Art Group Unit 1644
Case Docket No.: C150.12.3B	)

OFFICIAL

AMENDMENT AND RESPONSE TO RESTRICTION REQUIREMENT

Commissioner of Patents
Washington, D.C. 20231

Sir:

Responsive to Patent and Trademark Office letter of November 9, 2000, please amend as follows:

IN THE CLAIMS

Please correct the dependency of claim 9 from "1" to —7—.

REMARKS

Restriction has been required as among the following groups of claims:

1. Claims 1-3, method for the production of a microbial adherence inhibitor in the form of fowl egg antibody to food animal, classified in Class 424, subclass 131.1.

II. Claims 4-9, drawn to colony-forming immunogen, and microbial adherence inhibitor in the form of fowl egg antibody to food animal, classified in Class 530, subclass 387.1.

III. Claims 10 -11, drawn to method of promoting the growth of food animals by inhibiting the ability of the colony-forming protein-wasting immunogen to the rumen of food animals, classified in Class 4214, subclass 826.

IV. Claims 12-13, drawn to method of reducing or eliminating the incidence of illnesses caused by the presence of targeted colony-forming illness-causing immunogen in meat by inhibiting the immunogen to adhere to the rumen of food animals, classified in Class 425, subclass 826.

For purposes of this requirement applicants provisionally elect to prosecute claims 10 and 11 constituting group III. It is submitted, however, that unity of invention is present among the several claims and for this reason applicants respectfully traverse the restriction requirement.

Attention is directed to 37 CFR 1.141(b) and MPEP Section 806.05(i) which provide that:

> Where claims to all three categories, product, process of making, and process of use, are included in a national application, a three way requirement for restriction can only be made where the process of making is distinct from the product. If the process of making and the product are not distinct, the process of using may be joined with the claims directed to the product and the process of making the product even though a showing of distinctness between the product and process of using the product can be made.

It is submitted that the whole egg antibody adherence inhibitor of claims 4 through 9 are not distinct from the method of making that inhibitor defined by claims 1 through 3. As claimed, the inhibitor of claim 4 can only be made by the method of claim 1; the inhibitor of claim 5 can

only be made by the method of claim 2; and the inhibitor of claim 6 may only be made by the method of claim 3. Whether the inhibitor of claims 7 through 9 can be made by any method other than that of claims 1 through 3 is speculative. Likewise, it is speculative whether the whole egg antibody inhibitor can be used for purposes other than those claimed.

The method of use claims 10 through 13 are not distinct from the method of making claims 2 and 3 and product claims 5 and 6. Claim 10 incorporates the method of making a whole egg antibody adherence inhibitor defined in claim 2. As claimed, the inhibitor used in the method of claim 10 is the same inhibitor defined by claims 5 and 8 and can only be made by the method of claim 2. Claim 12 incorporates the method of making a whole egg antibody adherence inhibitor defined in Claim 3. As claimed, the inhibitor used in the method of Claim 12 is the same inhibitor defined by Claims 6 and 9 and can only be made by the method of Claim 3. It is submitted that the claims directed to the use of the whole egg antibody adherence inhibitor are not distinct from the claims directed to the method of making the inhibitor and the claims directed to the inhibitor product.

It is respectfully submitted that the restrictions requirement is improper and should be withdrawn.

In addition, it is asserted that the application contains claims directed to the following patentably distinct species of the claimed in Groups I and III: wherein the protein-wasting immunogen is:

A) *P. anaerobius,*

B) *C. Stricklandii,* or

C) *C. aminophilium.*

And the following patentably distinct species of the claims Groups 1 and IV wherein the

illness-causing immunogen is:

A) E. coli,

B) Listeria,

C) Salmonella or

D) Campylobacter.

and election has been required.

For purposes of compliance with this requirement applicants elect the species (A *P. anaerobius* and A) E.coli, subject to the right to consideration of the non-elected species upon the allowance of a generic claim.

Early and favorable reconsideration and action on the merits of all of the claims is respectfully solicited.

Respectfully submitted,

PETER NASH et al.

By _____

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